



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC566]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Berth III New Mooring Dolphins Project in Ketchikan, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from the City of Ketchikan, Alaska (COK) for the reissuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates. The initial IHA authorized take of nine species of marine mammals, by Level A and Level B harassment, incidental to construction.

DATES: This authorization is effective from October 1, 2023, through September 30, 2024.

ADDRESSES: An electronic copy of the final 2021 IHA previously issued to the COK, the Navy's application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting <https://www.fisheries.noaa.gov/action/incidental-take-authorization-berth-iii-new-mooring-dolphins-project-ketchikan-alaska>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

The construction is associated with the Berth III New Mooring Dolphins Project in Ketchikan, AK (March 3, 2021; 86 FR12411). The project has already been delayed by one year and NMFS had reissued the IHA to the COK (September 10, 2021; 86 FR 50704). None of the work covered in the initial IHA has been conducted. The initial IHA was effective from October 1, 2021, through September 30, 2022. The first reissued IHA was effective from October 1, 2022, through September 30, 2023. The COK has requested a subsequent reissuance of the IHA with new effective dates of October 1, 2023, through September 30, 2024. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. NMFS is, therefore, issuing an identical IHA to cover the incidental take analyzed and authorized in the initial IHA.

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On March 3, 2021, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the Berth III New Mooring Dolphins Project (86 FR 12411). The effective dates of that IHA were October 1, 2021, through September 30, 2022. On July 21, 2021, the COK informed NMFS that the project would be delayed by one year and requested a reissuance of the initial IHA. NMFS sent the reissued IHA to the COK on September 2, 2021 with effective dates of October 1, 2022, through September 30, 2023 (September 10, 2021; 86 FR 50704). None of the work identified in the initial IHA (*e.g.*, pile driving and removal) had occurred. On July 12, 2022, the COK submitted an additional request that we reissue an identical IHA that would be effective from October 1, 2023, through September 30, 2024, in order to conduct the construction work that was analyzed and authorized through the previously issued initial IHA. Therefore, reissuance of the IHA is appropriate.

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued initial IHA and the first reissued IHA.

The purpose of the COK's Berth III construction project is to accommodate a new fleet of large cruise ships (*i.e.* Bliss class) and to meet the needs of the growing cruise ship industry and its vessels in Southeast Alaska. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the initial IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Species that are expected to be taken by the planned activity include humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), gray whale (*Eschrichtius robustus*), killer whale (*Orcinus orca*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), harbor seal (*Phoca vitulina*), and Steller sea lion (*Eumetopias jubatus*). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The data inputs and methods of estimating take are identical to those used in the initial IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the initial 2021 IHA for the COK's construction work (86 FR 12411; March 3, 2021), the COK's application, the **Federal**

Register notice of the proposed IHA (85 FR 71612; November 11, 2021), and all associated references and documents.

Determinations

The COK will conduct activities as analyzed in the initial 2021 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The reissued 2023 IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA

Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Because the only change to the IHA are effective dates, the CE on record for issuance of the initial IHA applies to this action.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

The effects of this proposed Federal action were adequately analyzed in NMFS' Biological Opinion for the Berth III New Mooring Dolphins Project, dated February 11, 2021, which concluded that the take NMFS proposed to authorize through this IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat.

Authorization

NMFS has issued an IHA to the COK for in-water construction activities associated with the specified activity from October 1, 2023, through September 30, 2024. All previously described mitigation, monitoring, and reporting requirements from the initial 2021 IHA are incorporated.

Dated: December 5, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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